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6 IN THE DISTRICT COURT
7 FOR THE TERRITORY OF GUAM
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9 WASHINGTON D.C., SEATTLE CITY)
10 MANUFACTURING INC. and)
JAYDEEN CATHERINE DELA CRUZ,)

11 Plaintiffs,)

12 vs.)

13 DEPARTMENT OF PUBLIC HEALTH AND)
14 SOCIAL SERVICES, GUAM HOUSING AND)
15 URBAN RENEWAL AUTHORITY)
16 (GHURA), DEPARTMENT OF MENTAL)
HEALTH AND SUBSTANCE ABUSE,)
PUBLIC DEFENDER'S OFFICE and)
ALTERNATE PUBLIC DEFENDER'S)
OFFICE,)

17 Defendants.)
18

CIVIL CASE NO. 20-00034

REPORT & RECOMMENDATION
to Deny Application to Proceed Without
Prepaying Fees or Costs (ECF No. 2)
and to Dismiss Complaint

19 This matter is before the court on the Plaintiff Jaydeen Catherine Dela Cruz's Application
20 to Proceed Without Prepaying Fees or Costs (the "Application to Waive Fees"). See ECF No. 2.

21 **I. Application to Waive Fees**

22 Ms. Dela Cruz is proceeding in this action *pro se*, without an attorney, and has requested to
23 proceed without paying the required filing fee.¹ Section 1915(a)(1) permits a court to authorize a
24 person to commence a civil action without prepaying the required filing fee if said person "submits
25 an affidavit [stating] that the person is unable to pay such fees[.]" 28 U.S.C. § 1915(a)(1). Under
26 this statute, federal courts can authorize the filing of a law suit without prepayment of fees or

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28 ¹ Pursuant to 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$400
filing fee is required from the party instituting any civil action in federal court.

1 security by a person who submits an affidavit that includes a statement setting forth all the person's
2 assets and demonstrates an inability to pay such costs or give such security.

3 The court has reviewed the Ms. Dela Cruz's Application to Waive Fees, where she reports
4 she has no income and no money in the bank. Applic. Waive Fees at ¶¶2 and 4. She further claims
5 to owe \$8,200 in monthly expenses. *Id.* at 3. While it appears that the Ms. Dela Cruz has
6 demonstrated that she does not have the resources to pay the filing fee, this does not end the court's
7 inquiry. The court must still subject the Complaint to mandatory screening before allowing the case
8 to move forward and issue summons, requiring an answer or responsive pleading. *See Lopez v.*
9 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*).

10 **II. Screening Complaint**

11 Pursuant to 28 U.S.C. § 1915(e), the court is required to review the complaint and dismiss
12 the case if the court determines that the action is "frivolous or malicious," "fails to state a claim upon
13 which relief may be granted," or "seeks monetary relief from a defendant who is immune from such
14 relief." 28 U.S.C. § 1915(e)(2)(B); *Lopez*, 203 F.3d at 1126-27 (stating that 28 U.S.C. § 1915(e) "not
15 only permits but requires" the court to *sua sponte* dismiss an *in forma pauperis* complaint that fails
16 to state a claim). "A complaint is frivolous within the meaning of § 1915(d) if it lacks an arguable
17 basis either in law or in fact." *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citing
18 *Denton v. Hernandez*, 504 U.S. 25, 31 (1992)).

19 When screening a complaint, the court is mindful that allegations of a *pro se* complaint are
20 held to less stringent standards than the pleadings drafted by attorneys. *Erickson v. Pardus*, 551
21 (U.S. 89, 94 (2007)) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint,
22 however, inartfully pleaded, must be held to less stringent standards than formal pleadings drafted
23 by lawyers.") (internal quotations marks and citation omitted); *Hebbe v. Pliler*, 627 F.3d 338, 342
24 n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings is required after *Ashcroft v.*
25 *Iqbal*, 556 U.S. 662 (2007)). However, *pro se* litigants "should not be treated more favorably than
26 parties with attorneys of record," *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986); rather,
27 they must follow the same rules of procedure that govern other litigants. *Ghazali v. Moran*, 46 F.3d
28 52, 54 (9th Cir. 1995).

1 The court finds that the Complaint suffers a number of deficiencies. First, the Complaint
2 names two plaintiffs – Ms. Dela Cruz and Washington D.C. Seattle Manufacturing, Inc. (the
3 “Corporate Plaintiff”). It is not clear from the scant information provided in the Complaint what
4 relationship, if any, exists between Ms. Dela Cruz and the Corporate Plaintiff, but a corporation may
5 only appear in federal court through a licensed attorney. *See In re Am. W. Airlines*, 40 F.3d 1058,
6 1059 (9th Cir. 1994) (“Corporations and other unincorporated associations must appear in court
7 through an attorney.”). Ms. Dela Cruz is not a licensed attorney, and therefore she may not bring a
8 lawsuit on behalf of a corporation.

9 Second, the Complaint indicates that the basis for the court’s jurisdiction over this action is
10 “Diversity of citizenship.” Compl. at ¶ II, ECF No. 1. The court has diversity jurisdiction over cases
11 where the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is an action
12 between citizens of different states. *See* 18 U.S.C. § 1332. According to the Complaint, Ms. Dela
13 Cruz is a citizen of Guam and resides in Agat, Guam. Compl. at ¶¶ I.A and II.B.1, ECF No. 1.
14 Ms. Dela Cruz is suing five defendants, all of whom are Government of Guam agencies or
15 instrumentalities. *Id.* at ¶¶ I.B and II.B.2. It is thus clear from the complaint that there can be no
16 diversity of citizenship between the parties in this case.

17 Finally, ¶ III of the Complaint requires Ms. Dela Cruz to provide a “short and plain statement
18 of the claim.” *Id.* at ¶ III. Therein, Ms. Dela Cruz has written:

19 First of all[,] Defendant is not entitle[d] to public guardianship of my children; and
20 temp. child custody. Strictly not form of Gov. Agency. I am the parents (sic) of my
 children and I will get full and physical custody over my children and become a
 Public Guardian for them.

21 *Id.*

22 Based on the above language, it appears that Ms. Dela Cruz is attempting to challenge a
23 decision by one or more defendants to remove her children from her physical custody that likely
24 arose from a local court proceeding. This claim, without more, is not one that arises under the
25 Constitution, laws, or treaties of the United States. *See* 18 U.S.C. § 1331. The Complaint fails to
26 allege a claim against any defendant which may be based upon a federal question since she cites no
27 violation of a federal statute, treaty or constitutional provision that would entitle her to relief against
28 the defendants.

The court therefore recommends that the Complaint be dismissed since the court has no jurisdiction over the action.

III. Leave to Amend

When dismissing a complaint, a court should normally grant leave to amend “unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). *See also Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 725-26 (9th Cir. 2000) (“A district court acts within its discretion to deny leave to amend when amendment would be futile[.]”).

Here, leave to amend would be futile. First, with regard to any claim by the Corporate Plaintiff, Ms. Dela Cruz is not an attorney and thus it was improper for her to file this lawsuit on behalf of the Corporate Plaintiff. Second, the court has no diversity jurisdiction over any of the claims because Ms. Dela Cruz and the defendants are all citizens of Guam. Finally, the court has no federal question jurisdiction over the child custody determination at issue in the Complaint. The Complaint appears to be an attack on a child custody proceeding brought by government agents in the local court, and federal courts are prohibited from exercising subject matter jurisdiction over a suit that is a or “de facto appeal” from a state court judgment. *See Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004) (“*Rooker-Feldman* prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment.”).

IV. Recommendation

Accordingly, the court recommends that the Chief Judge deny the application to waive filing fees and dismiss the Complaint with prejudice because amendment would be futile.



/s/ **Michael J. Bordallo**
U.S. Magistrate Judge
Dated: Nov 05, 2020

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).